

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937**

**Crl.Rev.Pet.No. 2744 of 2006 ( )**  
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**AGAINST THE JUDGMENT IN CRL. APPEAL 123/2000 of ADDL. SESSIONS COURT  
(ADHOC)-III, THALASSERY**

**AGAINST THE JUDGMENT IN CC 554/1999 of ADDL.C.J.M.,THALASSERY**  
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**REVISION PETITIONER(S)/APPELLANTS/ACCUSED::**  
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- 1. K.K.PAVITRARAJ,  
AGED 50 YEARS,  
S/O.VASUDEVAN,  
PRINTER AND PUBLISHER, THALASSERY  
DESOM EVENING DAILY,  
PANOOR PRINTERS, PANOOR  
KANNUR DISTRICT.**
- 2. K. BALAN, S/O. KELAN,  
AGED 43 YEARS, PROPRIETOR,  
PANOOR PRINTERS,  
PANOOR, KANNUR DISTRICT.**

**BY ADV. SRI.M.DINESH**

**RESPONDENT(S)/COMPLAINANTS::**  
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- 1. STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. P.V. BASHEER AHAMMED, S/O. POKKU,  
PROPRIETOR, LIBERTY PRODUCTIONS,  
A.V.K.NAIR ROAD,  
THALASSERY, KANNUR DISTRICT.**

**BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23-  
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.R.P.2744 of 2006**  
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**Dated this the 23<sup>rd</sup> of November, 2015**

**ORDER**

The revision petitioners were charge-sheeted in C.C.554/99 on the file of the Addl. Chief Judicial Magistrate, Thalassery for having committed for offence punishable under Section 500, 501 and 502 r/w 34 IPC. The complainant's case in the trial court is that he is the Proprietor of M/s.Liberty Productions and Manager of M/s.Liberty Movies. He is also very active in social, political and cultural activities in Thalassery. He is known in Thalassery as Cement Basheer and is an active member of Indian Union Muslim League. The first accused is the printer and publisher of an evening daily, known as "Thalassery Desom" and second accused is the owner of the press. On 28.02.97, they published a news in the evening daily stating that complainant is an underworld don and the brain behind the murder of one Sukesh. The news published in the evening daily was referring to the

complainant which was a defamatory news. They published the news item with intention to tarnish the image of the complainant among the public. They deliberately published the news as a revenge for not giving any advertisement in their evening daily. In the circumstance, he filed a complaint in the trial court.

2. During trial, complainant examined PW1 to PW4 and marked Exts.P1 to P3. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. Revision petitioner examined DW1 to DW5 and marked Exts.D1 to D11. The trial court convicted the accused and sentenced to simple imprisonment for one month and fine of Rs.1000/- under Section 500 I.P.C. and fine of Rs.500/- each under Section 501 and 502 IPC. Against that conviction, he preferred Crl. Appeal 123/2000 before Addl. Sessions Judge, Adhoc-III, Thalassery in which, conviction and sentence was confirmed and the appeal was dismissed. Being aggrieved by that, he preferred this revision petition.

3. After filing this revision petition, there was no

representation from the side of the revision petitioners. No steps were taken against the respondents. In the circumstance, I appointed Adv.M.Dinesh as a counsel to provide legal aid for disposing this matter. Adv.Premalatha K. Nair was not interested in the matter and no steps were taken to give notice to second respondent. Hence, notice to the second respondent is dispensed with and I heard the legal aid counsel appearing for the revision petitioner and the Public Prosecutor.

4. The learned counsel appearing for the revision petitioner Adv.M.Dinesh contended that, no documentary evidence has been adduced by the second respondent in the trial court to show that he is known as Cement Basheer. His name is stated as P.V.Basheer, who is a reputed social and political worker at Thalassery. The revision petitioners made publication in their evening daily in good faith or keeping the public interest. When a publication is made in good faith, which is not a defamation to impute anything, which is true concerning any person and it is for the public good, that imputation

should not amount to an imputation within the meaning of defamation. Who is Cement Basheer is not proved by the second respondent. If that be the position, revision petitioners are entitled to get the benefit of doubt.

5. The learned Public Prosecutor has no dispute with regard to the above argument and admitted that no evidence has been adduced by the second respondent to show that the name mentioned in the news was his name.

6. According to the definition, defamation means whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, to said to defame that person, except in the cases explained in the exceptions. For ascertaining the imputation published by the revision petitioners, I have gone through the oral evidence of PW2. The evidence of PW2 shows that, he is a business man and also conducting a Cinema Theatre at Thalassery. He is conducting cement business and known

as Cement Basheer at Thalassery. He is also known as Liberty Basheer and conducting Liberty Productions and Liberty Movies. The accused are conducting evening daily, 'Thalassery Desom', A1 is the printer and publisher and A2 is the owner. On 28.02.97, there was a news with regard to the murder of one Sukesh. The news paper was marked as Ext.P1 in the trial court. In Ext.P1, accused published the name of one Cement Basheer, who is behind the murder of Sukesh. After publishing that news, there was threat from several sides. He was unable to travel through the road. As per Ext.P2 news also, the local people suspected him. After publishing Ext.P2 news, he issued Ext.P3 lawyer notice. But there was no reply. They published this news due to personal enmity. The accused requested advertisement in their newspaper, which was denied by PW2, who is a daily reader of the newspaper 'Thalassery Desom' which published a false news. These witnesses were cross-examined by defence counsel in which he admitted that he was an accused in a Coffeposa case and sentenced to imprisonment for 8 years. He was

also an accused in another case C.C.690/99. Even though, he stated that he was defamed by the accused, no documentary evidence has been produced in trial court to show that his name is known as Cement Basheer. In the petition it is shown as P.V.Basheer. In the absence of such evidence, the court cannot act upon the assumption that he is known as Basheer Ahammed @ Cement Basheer.

7. PW1 was the Investigating Officer in the murder case, who arrested the accused and he has no contact with PW2. PW3 stated that PW2 was known as Liberty Basheer and Cement Basheer. PW4 stated that PW2 was known as Cement Basheer and Liberty Basheer. Even though, these witnesses deposed that PW2 is known as cement Basheer, no evidence has been adduced to show that the name of second respondent is Cement Basheer. In the absence of such documentary evidence, the conviction under Sections 500, 501 and 502 is unsustainable in law.

8. The revision petitioners examined DW1 to DW4 in

the trial court. DW1 admitted that he is the reporter of one daily newspaper. He deposed that Ext.D1 petition was pending before C.I. of Police, Thalassery and he enquired it, from there he got information. The same news was also published in another newspaper which was marked as Ext.D2 and the relevant page was marked as D2(a). They also examined DW2, 3, 4 and 5 and marked Ext.D3 to D11. A close scrutiny of the evidence of these witnesses shows that they published the news with full *bona fides*. They have a right to publish the events with regard to murder, on the basis of D1 petition filed before the C.I. of Police, Thalassery and they had done it in bona fides. According to Exception 1 of Section 499 IPC, it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation is made. It is true that when an imputation is published in the newspaper for the benefit of public, the accused are entitled to get the benefit of such exception.

9. This court in **Jacob Mathew and Anr. V. Manikantan @ G. Mani & Anr. (2012 (3) KHC 373)** it

is held that;

“The freedom of press is considered as “the mother of all other liberties” in a free society. The press has not only an active role in such a society but a primary function to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. The press plays a significant role in mounting public opinion. In viewing the role of press, its freedom of expression, and, of course, with the limitations thereto, it cannot be lost sight of that what is expected from a newspaper is accurate and impartial presentation of news and dispassionate evaluation of the facts and information received by it in the publication of a news item. News published should be faithful and objective, and not distorted or false.”

Therefore, the question that arises for consideration is, whether prima facie materials are produced before court for a conviction under Section 500 IPC. A close scrutiny of the evidence, it is found that no materials are produced in the trial court to show that Cement Basheer and Basheer Ahammed are one and the same person. Therefore, the publication made against the Cement

Basheer in the daily on the basis of Ext.D1 complaint filed before C.I., Thalassery is not a defamatory statement affecting the second respondent. The trial court failed to appreciate that position and convicted the revision petitioners. In the result, the conviction and sentence under Section 500, 501 and 502 r/w 34 IPC passed by the trial court is set aside and accused are set at liberty. This revision petition is allowed.

STK

Sd/-  
**P.D. RAJAN,**  
**JUDGE**

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P.A. TO JUDGE